THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.13217 OF 2002

DATE: 03-08-2006

Between:

G.Damodar Reddy

.... Petitioner

A n d

The Superintendent Engineer,
Irrigation Circle,Bobbili – 535 558

... Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.13217 OF 2002

ORDER: *(Per the Hon'ble Sri Justice Bilal Nazki)*

Heard learned counsel for the parties.

In this writ petition which is pending in this Court from 2002, G.O.Ms.No.430, dated 24-10-1983 as amended by G.O.Ms.No.160, dated 01-06-1987 has been challenged as illegal, invalid and void. The petitioner was a contractor for certain works

and it appeared that he had some disputes with the respondents. It may be worthwhile to know that both these G.Os, which are impugned in this writ petition, have been issued prior to execution of contract between the petitioner and the respondents. In terms of G.O.Ms.No.430 read with G.O.Ms.No.160, the disputes between the parties to the tune of Rs.50,000/- would be decided by arbitration, whereas disputes above Rs.50,000/- would be decided by Civil Courts, if the parties so desire. According to the petitioner, the disputed amount is more than Rs.12 lakhs. Therefore, in terms of the G.O., the petitioner had to approach the Civil Court if he wanted his grievance to be redressed. Obviously, he did not choose to go to a Civil Court, but rather approached this Court seeking quashing of the G.Os. We have not been able to find any ground whatsoever in the writ petition nor is any argument advanced by the learned counsel as to how the G.Os are *ultra vires* the Arbitration and Conciliation Act, 1996. It is only stated at the Bar by the learned counsel that after promulgation of new Arbitration Act, 1996 which is a Central Act, the State had no power to issue the impugned G.Os and if such G.Os were in place, they have become void. We fail to understand this argument because as far as arbitration is concerned, the principles laid down in 1940 Act remain the same, and even after promulgation of 1996 Act, the parties to the disputes should agree for arbitration. Unless there is an agreement between the parties, no Court or no Act can impose arbitration on the parties. In the counter affidavit it has been stated that there was a stipulation in the agreement itself between the parties that in case of disputes,

G.O.Ms.Nos.160 and 430 would apply. As such, we do not find any merit in this petition.

The learned counsel for the petitioner has drawn our attention to a judgment of the Supreme Court in *H.S.SRINIVASA RAGHAVACHAR AND OTHERS VS. STATE OF KARNATAKA AND OTHERS*[1]. We do not find any law laid down in this judgment, which could decide the fate of the present case. There was a question before the Supreme Court that Section 48(8) of an Act passed in Karnataka was repugnant to Section 30 of the Advocates Act, 1961 and Section 14 of the Indian Bar Councils Act, 1926. There is no law indeed to be gone through to strike down a legislation enacted by the State in the Concurrent List, which is repugnant to the law made by the Parliament. There is no such case before us. Parties have agreed by an agreement that in case the dispute is below Rs.50,000/-, it would be decided by an arbitration and in case it is above Rs.50,000/-, parties will have to go to the Civil Court. Even if there were no G.Os, which are impugned in this petition, the parties can seek redressal of the disputes because such conditions are incorporated in the agreement itself.

For these reasons, we do not find any merit in this writ petition, which is accordingly dismissed.

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BILAL NAZKI, J

Dt.03-08-2006

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M.VENKATESWARA REDDY,J

Lrkm.

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[1] (1987) 2 SUPREME COURT CASES 692